



Entered on Docket  
August 24, 2006

Hon. Linda B. Riegler  
United States Bankruptcy Judge

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Attorneys for Debtors and Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

In re:  
USA COMMERCIAL MORTGAGE COMPANY,  
Debtor.

In re:  
USA CAPITAL REALTY ADVISORS, LLC,  
Debtor.

In re:  
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
Debtor.

In re:  
USA CAPITAL FIRST TRUST DEED FUND, LLC,  
Debtor.

In re:  
USA SECURITIES, LLC,  
Debtor.

Affects:

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☒ USA Capital Diversified Trust Deed Fund, LLC
- ☒ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Case No. BK-S-06-10725 LBR  
Case No. BK-S-06-10726 LBR  
Case No. BK-S-06-10727 LBR  
Case No. BK-S-06-10728 LBR  
Case No. BK-S-06-10729 LBR  
Chapter 11  
Jointly Administered Under  
Case No. BK-S-06-10725 LBR

**ORDER (A) GRANTING (i) DEBTORS' MOTION TO DISTRIBUTE FUNDS; (ii) DEBTORS' HOLD FUNDS MOTION AND (iii) THE COMPEL MOTION, AND (B) DENYING (i) THE LIFT STAY MOTION AND (ii) MCKNIGHT MOTION (AFFECTS USA COMMERCIAL MORTGAGE, USA CAPITAL DIVERSIFIED TRUST DEED FUND, AND USA CAPITAL FIRST TRUST DEED FUND)**

Date: August 4, 2006  
Time: 9:30 a.m.

The Debtors' Motion to Distribute Funds and to Grant Ordinary-Course Releases and Distribute Proceeds (the "Distribution Motion") (Docket No. 847), the Debtor's Motion to Temporarily Hold Funds Pending a Determination of the Proper Recipients (the "Hold Funds Motion") (Docket No. 173),<sup>1</sup> the Motion for Relief from Stay (the "Lift Stay Motion") (Docket No. 208) filed by Janet L. Chubb, Esq., the Motion to Compel Debtor to Continue to Forward Lender Payments to Direct Lenders (the "Compel Motion") (Docket No. 215) filed by Janet L. Chubb, Esq., and the Motion Directing Payments to Direct Lenders (the "McKnight Motion") (Docket No. 336), filed by David Mincin, Esq., having come before the Court; the Court having reviewed the briefs on file and the arguments of counsel; the Court finding that a distribution can be made while preserving all rights and legal positions of all parties; the Court specifically not making a determination concerning the legal rights of the various creditors, investors, and lenders; the Court having made its findings of fact and conclusions of law on the record pursuant to Bankruptcy Rule 7052, and finding good cause, it is ORDERED:

1. The Distribution Motion is hereby granted solely to the extent set forth below.

2. To the extent applicable, USA Commercial Mortgage Company ("USACM") is authorized to make an interim distribution ("Interim Distribution") from (i) the post-petition collections deposited in the Collection Account for the period through June 30, 2006 and (ii) \$6,070,445.14 of the pre-petition amounts that were in the Collection Account on the Petition Date—as approved by each of the official committees appointed in these cases, to each of USA Capital Diversified Trust Deed Fund, LLC ("Diversified"), USA Capital First Trust Deed Fund, LLC (the "FTD Fund") and each of the other Direct Lenders (collectively, "Lenders" and each a "Lender") as calculated by the Debtors in connection with the Direct Lender Statements prepared as of June 30, 2006 and recently mailed to Direct Lenders less the amounts set forth below:

(a) USACM's servicing fees (i.e., the 1% servicing fee that the Debtor's requested in the Distribution Motion) and other fees and costs it is entitled to charge;

(b) an additional 2% of principal on all loans that were fully paid off post petition (as listed in 13 of the Declaration of Thomas J. Allison (Docket No. 1090)), such that the

<sup>1</sup> Terms not otherwise defined herein shall have the same meanings ascribed to them in the Distribution Motion.

1 servicing fee charged on such loans is 3%, pending the Court's review of the proper amount of  
 2 servicing fees to be charged (the "Payoff Holdback"); and

3 (c) the amounts that each Lender received pre-petition from USACM on non-  
 4 performing loans (the "Offsets"), as reflected by the sum of the amounts shown on Line 12 of the  
 5 Lender Statement(s) for each Lender by account number.<sup>2</sup>

6 3. All amounts that are not distributed by USACM, including the Payoff Holdback  
 7 and Offsets, shall be held and segregated in the Collection Account, with the rights and legal  
 8 positions of all parties, including the Debtors, reserved in such funds and shall not be further  
 9 disbursed absent an applicable order of the Court. Such funds held and segregated in the  
 10 Collection Account shall be deemed to be not commingled.

11 4. Upon the FTD Fund receiving its share of the Interim Distribution, the FTD Fund is  
 12 hereby authorized, after establishing a reserve of \$1,011,198.45, to distribute remaining available  
 13 funds to Fund Members of the FTD Fund (the "FTDF Distribution"), in accordance with the terms  
 14 of the Second Amended and Restated Operating Agreement of USA Capital First Trust Deed  
 15 Fund, LLC; provided, however, that any such distribution is without prejudice to the right of any  
 16 party in interest to claim and assert an interest in such distributed funds.

17 5. The Interim Distribution and FTDF Distribution are made without waiving the  
 18 rights or claims of any party in interest, including the rights or claims of any Creditor, Debtor or  
 19 any Direct Lender, in connection with (i) USACM's calculation of the amounts distributed, (ii)  
 20 USACM's right to collect servicing fees and other fees provided under the Servicing Agreements  
 21 and other applicable agreements, (iii) USACM's right to net all amounts that may be owed to and  
 22 from a Direct Lender, and (iv) all other rights and arguments, specifically including, without  
 23 limiting the foregoing, the right or claims discussed by Diversified in its limited opposition  
 24 (Docket No. 987), any rights USACM may have to recover from any Direct Lender to the extent  
 25 the Direct Lender receives a distribution under the Interim Distribution that is ultimately  
 26 determined to be greater than such Direct Lender had a right to receive and the right of any Direct  
 27

28 <sup>2</sup> For example, if a particular Lender invested in five different loans under a single vesting name, the amounts  
 (which may be positive or negative) shown on Line 12 of each of the five Lender Statements for that vesting

Lender to recover any amounts from any Offsets which are finally determined to be improper, incorrect or contrary to applicable law. The Interim Distribution and FTDF Distribution are preliminary in nature and the payment of such will not finally determine the rights of any party with respect to those distributions.

Any final determination with respect to any distributions and any Offsets related thereto, including any factual findings and legal ruling, shall be made upon appropriate notice and in such additional proceedings as to be determined by the Court.

6. The Hold Funds Motion is granted to the extent not inconsistent with this Order.

7. The Lift Stay Motion is denied without prejudice.

8. The Compel Motion is granted to the extent it seeks the relief granted in this Order but is otherwise denied.

9. The McKnight Motion is denied without prejudice.

10. On August 31, 2006 at 9:30 a.m., the Court will conduct a continued hearing on the balance of the relief requested in the Distribution Motion.

11. All parties who filed responses to the Distribution Motion have agreed to waive the 10 day stay under Bankruptcy Rule 6004(g).

Submitted by:

Approved / Disapproved by:

RAY QUINNEY & NEBEKER P.C. and  
SCHWARTZER & MCPHERSON LAW FIRM

OFFICE OF THE U.S. TRUSTEE

By: /s/ Lenard E. Schwartzer  
LENARD E. SCHWARTZER, ESQ.  
Attorneys for Debtor and Debtor-In-Possession

By: [Signature]  
AUGUST B. LANDIS, ESQ.

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name will be netted together and the resulting amount, if positive, will be available for distribution to the Lender.



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 7 **LEWIS AND ROCA, LLP**

8 By:   
 9 **SUSAN M. FREEMAN, ESQ.**  
 10 **ROB CHARLES, ESQ.**  
 11 *Counsel for the Official Committee of*  
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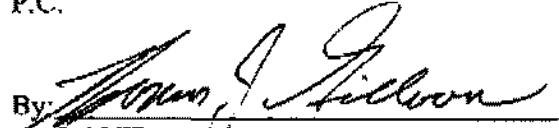
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Aug. 24. 2006 11:30AM

SCHWARTZER & MCPHERSON

No. 4172. P. 5/6

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6 Approved/Disapproved by:  
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7 By:   
8 LAUREL E. DAVIS, ESQ.  
9 Attorneys for The CAVEPA GROUP

Approved/Disapproved by:  
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By: /s/ Michael M. Schmahl  
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12 FRIEDBERG & FELSENTHAL LLP

13 By: \_\_\_\_\_  
14 ROBERT KINAS, ESQ.  
15 MARK KONRAD, ESQ.  
16 ANDREW J. ABRAMS, ESQ.

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By: \_\_\_\_\_  
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By: \_\_\_\_\_  
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JEFFREY G. SLOANE, ESQ.

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13 By: /s/ Rob Kinas  
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17 ###

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